

Point of Taxation

3.1 Introduction

Point of taxation means the point in time when a service shall be deemed to have been provided. Point of Taxation Rules, 2011 determine the point of taxation.

As per these rules, point of taxation is –

- the time when the invoice for the service provided or agreed to be provided is issued;
- if invoice is not issued within prescribed time period (30 days except for specified financial sector where it is 45 days) of completion of provision of service, then the date of completion of service;
- the date of receipt of payment where payment is received before issuance of invoice or completion of service.

Therefore, liability to pay service tax will arise on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment, whichever is earlier.

3.2. Determination of point of taxation-General rule [Rule 3]

For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be-

- (a) the time when the invoice for the service provided/ agreed to be provided is issued.

However, in case the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be) of the completion of the provision of the service, the point of taxation shall be date of such completion.

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

For the purposes of clauses (a) and (b), -

- (i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

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- (ii) wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a) [Proviso to rule 3].

Point of taxation in case of advance received by service provider

For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be **the date of receipt of each such advance**.

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As per rule 3 of the said rules, point of taxation would be determined as follows:-

S.No.	In case	Point of taxation would be
1.	the invoice is issued within the prescribed period of 30 days* from the date of completion of provision of service	(a) Date of invoice or (b) Date of payment whichever is earlier
2.	the invoice is not issued within the prescribed period of 30 days* from the date of completion of provision of service	(a) Date of completion of service or (b) Date of payment whichever is earlier

The principle of point of taxation can be better understood with the help of the following tabular summary followed by an illustration:-

Case	In case where	Point of Taxation	
I	Invoice is issued within 30 days* from the completion of service and payment is received after invoice	Date of invoice	
II	Invoice is issued within 30 days* from the completion of service, but payment is received before invoice	Date on which payment is received.	
III	Invoice is not issued within 30 days* from the completion of service and payment is received after completion of service	Date of completion of service	
IV	Invoice is not issued within 30 days* from the completion of service. However, part payment is received before the completion of	For the payment received	Point of taxation is

	service and remaining payment is received after the completion of service.	before the date of completion of service	the date on which payment is received.
		after the date of completion of service	the date of completion of service.

*45 days in case of in case of banking and other financial institutions including NBFCs.

Illustration

In case of provision of the taxable services other than banking and other financial institution including NBFCs, point of taxation would be determined as under:-

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation
I	September 5, 2013	September 28, 2013	October 10, 2013	September 28, 2013
II	September 5, 2013	October 03, 2013	September 20, 2013	September 20, 2013
III	September 5, 2013	October 8, 2013	September 25, 2013	September 5, 2013
IV	September 5, 2013	October 8, 2013	Amount received partly on September 3, 2013 and remaining on September 20, 2013	September 3, 2013 and September 5, 2013 for respective amounts

Determination of date of completion of service

- (i) **Date of completion of service in cases other than continuous supply of services:** CBEC vide *Circular No. 144/13/2011- ST dated 18.07.2011* has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 30 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so completed. Thus, it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

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- (ii) **Date of completion of service in case of continuous supply of services:** The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service".

Further, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Point of taxation in case where payment upto ₹ 1,000 received in excess of the invoiced amount: Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, as the case may be, rather than payment.

Purpose of the aforesaid provision:-As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

3.3 Determination of point of taxation in case of change in effective rate of tax [Rule 4]

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a **change in effective rate of tax** in respect of a service, shall be determined in the manner laid down in the following table namely:-

In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be
(i) BEFORE the change in effective rate of tax.	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of issuance of invoice
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of receipt of payment

(ii) AFTER the change in effective rate of tax.	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of receipt of payment
	PRIOR to the change in effective rate of tax	PRIOR to the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of issuance of invoice

3.4 Payment of tax in cases of new services [Rule 5]

Where a service is taxed for the first time, then,—

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.

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This rule specifically discusses the situation where a service is charged to tax for the first time i.e. becomes taxable for the first time.

The rule provides that:-

- (a) If an invoice has been issued and payment is received before a service becomes taxable, no tax would be charged even if the service is provided after the same has become taxable. This provision is consistent with the other similar provisions in these rules, and ensures that a financial transaction which has achieved finality before a service was taxable shall not be reopened for collection of tax.
- (b) If any payment has been received prior to a service being chargeable to tax, no tax shall be chargeable if an invoice has also been issued within 14 days of the date when the service is taxed for the first time.

3.5 Determination of point of taxation in case of person liable to pay service tax under reverse charge or in case of associated enterprises [Rule 7]

Notwithstanding anything contained *in rules 3, 4, and 8*, the point of taxation in respect of the persons required to pay tax as recipients under the rules made in this regard in respect of

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services notified under sub-section (2) of section 68 of the Finance Act, 1994 shall be the date on which payment is made.

However, where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months.

Moreover, in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

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- (i) **Point of taxation in case of services taxed under reverse charge mechanism¹:** In respect of the persons liable to pay service tax under reverse charge mechanism, the point of taxation shall be the date on which payment is made subject to the condition that the payment is made within a period of **three** months of the date of invoice.

However, if the payment is NOT made within a period of three months of the date of invoice, point of taxation will be the first day that occurs immediately after the expiry of said three months. In other words, point of taxation in respect of services taxed under reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier.

Thus, point of taxation in the following cases of payment of service tax under reverse charge, will be as under:

S. No	Date of invoice	Date of payment	Point of taxation
(i)	15.10.2014	10.01.2015	10.01.2015
(ii)	20.10.2014	15.02.2015	20.01.2015

- (ii) **Point of taxation in case of import of services by “associated enterprises”** In case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be:-

(a) the date of debit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

¹ The concept of reverse charge has been discussed in Chapter 6: Service Tax Procedures.

3.6 Determination of point of taxation in case of copyrights, etc. [Rule 8]

Rule 8 applies where in case of royalties and payments pertaining to copyrights, trademarks, designs or patents, the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration.

In such a case, the service shall be treated as having been provided each time when:-

- (a) a payment in respect of such use/benefit is received by the provider in respect thereof
- or

- (b) an invoice is issued by the provider

whichever is earlier.

3.7 Determination of point of taxation in other cases [Rule 8A]

Rule 8A is the residual rule to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise Officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

1. Definitions under rule 2

In these rules, unless the context otherwise requires,

- (a) **Act** means the Finance Act, 1994.

- (b) **Continuous supply of service** means

- (i) any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,

or

- (ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Services notified by the Central Government

In this regard the Central Government has prescribed the provision of following services to be a continuous supply of service:-

- (i) Telecommunication Services
- (ii) Works Contract Services
- (c) **Invoice** means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule.
- (d) **Point of taxation** means the point in time when a service shall be deemed to have been provided.
- (e) **"Change in effective rate of tax"** shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made there under.

2. Definition of date of payment under rule 2A

Date of payment shall be:-

- (a) date on which the payment is entered in the books of accounts
or
- (b) date on which payment is credited to the bank account of the person liable to pay tax
whichever is earlier.
- (A) **Date of payment in case of change in effective rate of tax or a new levy between the above two dates**
In case,
 - (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;
 - (ii) the bank account is credited after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
 - (iii) the payment is made by way of an instrument which is credited to a bank account,
the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.
- (B) **If any rule requires determination of the time or date of payment received:** the expression "date of payment" shall be construed to mean such date on which the payment is received.